

§ 1.341-1

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section 338 election for a domestic target for which no section 338(h)(10) election is made, old target may make the election to apply the regulations retroactively only if new target also makes the election. Paragraph (c)(3)(ii) of this section prescribes the time and manner of the election for old target.

(ii) *Time and manner of making the election for old target.* Old target may make an election described in paragraph (c)(3)(i) of this section by attaching a statement to each affected party's original or amended income tax return for the taxable year that includes the deemed sale tax consequences. The statement must be entitled "Election to Retroactively Apply the Rules in §§1.338-11 (including the applicable provisions in §§1.197-2(g)(5), 1.381(c)(22)-1 and 846) to a transaction completed before April 10, 2006" and must include the following information—

(A) The name and E.I.N. for old target; and

(B) The following declaration (or a substantially similar declaration): Old target has amended its income tax returns for the taxable year that includes the deemed sale tax consequences and for all affected subsequent years to reflect the rules in §§1.338-11 (including the applicable provisions in §§1.197-2(g)(5), 1.381(c)(22)-1 and 846). All other parties whose income tax liabilities are affected by old target's election have amended their income tax returns for all affected years to reflect the rules in §§1.338-11 (including the applicable provisions in §§1.197-2(g)(5), 1.381(c)(22)-1 and 846).

[T.D. 8940, 66 FR 9954, Feb. 13, 2001, as amended by T.D. 9257, 71 FR 18003, Apr. 10, 2006; T.D. 9377, 73 FR 3873, 3874, Jan. 23, 2008]

COLLAPSIBLE CORPORATIONS; FOREIGN PERSONAL HOLDING COMPANIES

§ 1.341-1 Collapsible corporations; in general.

Subject to the limitations contained in § 1.341-4 and the exceptions contained in § 1.341-6 and § 1.341-7(a), the entire gain from the actual sale or exchange of stock of a collapsible corporation, (b) amounts distributed in complete or partial liquidation of a collapsible corporation which are treated, under section 331, as payment

in exchange for stock, and (c) a distribution made by a collapsible corporation which, under section 301(c)(3), is treated, to the extent it exceeds the basis of the stock, in the same manner as a gain from the sale or exchange of property, shall be considered as ordinary income.

[T.D. 7655, 44 FR 68459, Nov. 29, 1979]

§ 1.341-2 Definitions.

(a) *Determination of collapsible corporation.* (1) A collapsible corporation is defined by section 341(b)(1) to be a corporation formed or availed of principally (i) for the manufacture, construction, or production of property, (ii) for the purchase of property which (in the hands of the corporation) is property described in section 341(b)(3), or (iii) for the holding of stock in a corporation so formed or availed of, with a view to (a) the sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, prior to the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and (b) the realization by such shareholders of gain attributable to such property. See § 1.341-5 for a description of the facts which will ordinarily be considered sufficient to establish whether or not a corporation is a collapsible corporation under the rules of this section. See paragraph (d) of § 1.341-5 for examples of the application of section 341.

(2) Under section 341(b)(1) the corporation must be formed or availed of with a view to the action therein described, that is, the sale or exchange of its stock by its shareholders, or a distribution to them prior to the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and the realization by the shareholders of gain attributable to such property. This requirement is satisfied in any case in which such action was contemplated by those persons in a position to determine the policies of the corporation, whether by reason of their owning a majority of the voting stock of the corporation or otherwise.